

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION**

Dwight Freeman,
Plaintiff

vs

Case No. C-1-07-41
(Beckwith, J.; Hogan, M. J.)

Warden Voorhies, et. al.,
Defendants

REPORT AND RECOMMENDATION

This matter is before the Court on Plaintiff's Motion for a Default Judgment (Doc. 14); and Defendants' Response to Plaintiff's Motion for Default Judgment (Doc. 15).

Plaintiff initiated this action with the filing of a complaint on January 22, 2007. (Doc. 2). Service was made upon Defendant Voorhies on March 2, 2007. (Doc. 8, Return of Service). Thereafter, on March 22, 2007, Defendants filed a Motion to Dismiss (Doc. 7).

The procedure governing the entry of default and default judgment is set forth in Fed. R. Civ. P. 55, which provides in pertinent part:

- a) Entry. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise, the clerk shall enter the party's default.

Fed. R. Civ. P. 55(a).

Defendants, having appeared and filed a Motion to Dismiss, are not in default.

See Fed. R. Civ. P. 55(a); Sandoval v. Bluegrass Regional Mental Health-Mental Retardation Board, No. 99-5018, 2000 WL 1257040 at * 5 (6th Cir. July 11, 2000); *Dekoven v. Avengical Press*, No. 4:98-CV-43, 1999 WL 34794967 at *4 (W.D. Mich. May 12, 1999).

IT IS THEREFORE RECOMMENDED THAT Plaintiff's Motion for Default Judgment (Docs. 14) be DENIED.

Date:

9/13/07



Timothy S. Hogan
United States Magistrate Judge

NOTICE TO THE PARTIES REGARDING THE FILING
OF OBJECTIONS TO THIS R&R

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to this Report & Recommendation (“R&R”) within **FIFTEEN (15) DAYS** of the filing date of this R&R. That period may be extended further by the Court on timely motion by either side for an extension of time. All objections shall specify the portion(s) of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party shall respond to an opponent’s objections within **TEN DAYS** after being served with a copy of those objections. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981).

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